

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L. BUESGENS,

Plaintiff,

v.

BULLIVANT HOUSER BAILEY PC,
et al.,

Defendants.

No. C 08-4061 PJH

**ORDER DENYING MOTION FOR
RECONSIDERATION**

Plaintiff Michael L. Buesgens filed this action on August 25, 2008. On December 29, 2008, he filed a notice of related case, asserting that the present case was related to Buesgens v. Hart, C-08-5710 MMC, which he had filed in this district on December 22, 2008. On January 2, 2009, the court dismissed the present case pursuant to 28 U.S.C. § 1915, for failure to state a claim. Judgment was entered as of that date. On January 8, 2009, the court issued an order finding the present case not related to C-08-5710 MMC.

On January 12, 2009, plaintiff filed a motion for reconsideration of the order finding the cases not related. Plaintiff asserts that the cases are related because they “arise[] from housing discrimination and concealing evidence of wrongdoing at Falcon Ridge Apartments” and involve “interference in his housing discrimination complaints.” The reference to “Falcon Ridge Apartments” is a reference to events that occurred in connection with the filing of an eviction complaint against plaintiff in Austin, Texas, in late 2005; and the 2006 trial of the eviction. Plaintiff subsequently filed a housing discrimination

1 suit in 2006, against (among other defendants) the owners of Falcon Ridge Apartments.

2 Since that time, plaintiff has litigated or attempted to litigate claims relating in some
3 way to the eviction action and the housing discrimination suit in numerous federal courts
4 throughout the United States. As the court noted in the November 10, 2008, order in the
5 present case, plaintiff is the subject of a pre-filing order issued by the Hon. Sam Sparks in
6 the Western District of Texas. See Order, Buesgens v. Travis County, Texas, Civil Action
7 No. 07-0427-SS (W.D. Texas, June 20, 2007). In that case, plaintiff named approximately
8 60 defendants, including state and federal employees and judges; private individuals,
9 attorneys and business entities; the Fifth Circuit Court of Appeals; the U.S. Department of
10 Justice; the U.S. Department of Housing and Urban Development; and the United States.
11 Id. at 1.

12 Judge Sparks found, based on plaintiff's history of filing frivolous and repetitious
13 complaints and interlocutory appeals, and continuing to attempt to litigate matters already
14 subject to final judgment – and in particular, based on his history of filing successive
15 actions adding claims against persons and entities he believes were responsible for his
16 failure to achieve relief in prior cases – that plaintiff is a vexatious litigant who should be
17 barred from filing any future civil actions in any federal court in the United States without
18 first seeking leave of the court in which he wishes to file the action. Id. at 9-10.¹

19 In the present action, which has been dismissed for failure to state a claim, plaintiff
20 alleged claims under federal criminal statutes against various members of the law firm of
21 Bullivant Howser Bailey PC, asserting that they had misrepresented facts in papers they
22 had filed in an appeal of a District of Oregon decision that was pending before the Ninth
23 Circuit Court of Appeals.

24 In case No. C-08-5710 MMC, plaintiff claims that various defendants, including
25 property management companies, real estate brokers, and employees of real estate

26
27 ¹ The court acknowledged in the November 10, 2008 order that the Texas pre-filing
28 order cannot be applied to this case, under the standard articulated by the Ninth Circuit in
Molski v. Evergreen Dynasty Corp., 500 F.3d 1047 (9th Cir. 2007); rehearing en banc denied,
521 F.3d 1215 (9th Cir. 2008); petition for cert filed (July 7, 2008).

1 companies in Humboldt County, California, refused to rent him an apartment because of his
2 eviction history, and in so doing, discriminated against him and failed to accommodate his
3 mental disability. He also named as defendants various individuals who had some
4 connection with the Texas legal proceedings, although the claims against those defendants
5 are less clear than the claims against the Humboldt County defendants.

6 While the genesis of the events that prompted plaintiff to file both these actions (as
7 well as lawsuits filed in other districts) may be, in plaintiff's mind, the 2005-2006 events in
8 Texas, the court found the present action not related to case No. C-08-5710 MMC because
9 the two actions do not "concern substantially the same parties, property, transaction, or
10 event" and because it does not "appear[] likely that there will be an unduly burdensome
11 duplication of labor and expense or conflicting results if the cases are conducted before
12 different Judges." Civil L.R. 3-12(a).

13 Under the local rules of this court, a party may seek reconsideration of "any
14 interlocutory order" made in a case "[b]efore the entry of judgment adjudicating all of the
15 claims and the rights and liabilities of all the parties in a case." Civil L.R. 7-9(a). However,
16 before seeking reconsideration, the party must first request leave of court to file a motion
17 for reconsideration. *Id.* Because plaintiff did not seek leave of court to file the motion for
18 reconsideration, the motion is DENIED.

19 As a further basis for denial, the court finds that plaintiff has not met the standard for
20 reconsideration. He has shown neither that a material difference in fact or law exists from
21 that which was presented to the court before entry of the interlocutory order for which
22 reconsideration is sought; nor the emergence of new material facts or a change of law
23 occurring after the time of such order; nor a manifest failure by the court to consider
24 material facts or dispositive legal arguments which were presented to the court before such
25 interlocutory order. Civil L.R. 7-9(b).

26 Finally, plaintiff filed the motion after judgment had been entered. While a party may
27 seek an order amending the judgment under Federal Rule of Civil Procedure 59, or may
28 seek relief from judgment under Federal Rule of Civil Procedure 60, following entry of

1 judgment, neither the Federal Rules nor the local rules allow a party to seek relief from an
2 interlocutory order once judgment has been entered.

3
4 **IT IS SO ORDERED.**

5 Dated: January 13, 2009



PHYLLIS J. HAMILTON
United States District Judge